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D3(Con)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

Cr.Appeal No. 975 /1998.

Appellant : Budharu son of Gajadhar, aged 55 years, resident of Kamasipara, Raipur, district Raipur, M.P.

(In Jail)

6726

Filed on 23.11.98

by Shri R.L.S. Thakur

Advocate

Versus.

Respondent : State of Madhya Pradesh.

Criminal Appeal U/s 374(2) Cr.P.C.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. No. 975/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

10-3-2006

Ms., Sofia Khan counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. D.K. Gwalre, Panel Lawyer for the State/respondent.

Oral judgment dictated on Dais.

PER L.C. BHADOO, J.

The accused/appellant has preferred this appeal under Section 374 (2) of the Cr.P.C. questioning the legality and correctness of the judgment of conviction and order of sentence dated 17/01/1998 passed by the 3rd Additional Sessions Judge, Raipur in S.T. No.24/96 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.200/- in default of payment of fine to further undergo rigorous imprisonment for one month.

The case of the prosecution is that on 21/10/1995 Sub Inspector D.S. Parihar of City Kotwali Police Station was on patrolling duty at about 11.15 P.M., he received a wifeless message that on account of stabbing in Nawapara, the injured is admitted to the hospital and on enquiry from

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the doctor, the doctor said that the injured is not in a position to give statement. On 22/10/1995 again the doctor was contacted and the doctor said that the injured is not in a position to give statement. On this, enquiry was made from Kumari Bai, sister-in-law of the deceased, on which she disclosed that on the fateful night one Rajwati, a neighbour, came and informed that Shambhoo (since deceased) and Budharu are quarrelling on which she along with her husband Samaru, Neelu and Santosh went to the place of occurrence and they saw that Budharu after caught hold of Shambhoo fell him down, therefore, they intervened and separated them and saw that there was injury on the waist of Shambhoo and blood was oozing out of the injury. The clothes of Shambhoo were drenched with blood, therefore, they took him to the D.K. Hospital, Raipur. On the information given by Kumari Bai, Dehati Nalishi 0/95 under Section 307 of the IPC was registered and investigation was taken up. The dying declaration (Ex.P/8) was recorded by Naib Tahsildar G.M. Ansari (PW-8). During police custody, the accused gave memorandum (Ex.P/10) regarding the place where he kep the Gupti, the weapon of offence, and in pursuance of that Gupti was recovered. The recovery memo is Ex.P/11. The clothes were taken into possession vide Ex.P/12. the site plan of the occurrence (Ex.P/15) was prepared. However, during the treatment Shambhoo succumbed to the injury on 01/11/1995. Thereafter after giving notice (Ex.P/4A) to the Panchas, Panchanama (Ex.P/4) of the dead body of the deceased was

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prepared. The post mortem on the dead body of the deceased was conducted by Dr. D.C. Jain (PW-1) Professor and Head of the Department and he prepared the post mortem report (Ex.P/1).

After completion of investigation, charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Raipur who in turn committed the case to the Sessions Judge, Raipur, from where learned Additional Sessions Judge, Raipur received the case on transfer for trial.

The prosecution in order to establish the charge against the accused appellant examined as many as 13 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the argument of respective counsel, convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

The homicidal death of deceased Shambhoo is not in dispute.

As far as involvement of the accused/appellant in committing the crime in question is concerned, PW-6 Kumari Bai and PW-7 Samaru are the witnesses who witnessed the crime in question and they have stated that on receiving the information that Budharu and Shambhoo are

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quarrelling, they went to the scene of occurrence and saw that they were quarrelling and thereafter they saw that Shambhoo fell down on the ground and Budharu was standing there. They saw that there was injury on the stomach of Shambhoo and from the injury blood was oozing out and the clothes of Shambhoo were drenched with blood. The evidence of the eye witnesses further corroborated by the dying declaration given by the deceased before PW-8 G.M. Ansari, Executive Magistrate, in which he has clearly stated that Budharu assaulted him on stomach and the Magistrate has stated that he recorded the dying declaration of the deceased which is Ex.P/8. Moreover, the weapon of offence in question has been recovered at the instance of the accused based on his memorandum. Therefore, in view of the above evidence, it is established that the accused was author of the crime in question.

Learned counsel for the accused/appellant argued that as both, the deceased was cousin brother of accused and they were consuming liquor together and while consuming liquor there was some dispute between them and they started quarrelling and thereafter the accused stabbed the deceased. Therefore, the offence against the accused appellant does not travel beyond under Section 304 Part-II of the IPC.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

It is admitted position that the deceased and the accused were consuming liquor together and at that moment on some dispute they

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started quarrelling and in that process the accused brought the Gupti and stabbed the deceased with the same when the eye witnesses Sumaru and Kumari Bai reached the scene of occurrence the accused said that Shambhoo has received knife injury, therefore, take him to the hospital. From the above facts, it appears that the quarrel started between the deceased and the accused when they were consuming liquor and the accused assaulted the deceased in a spur of moment or in a heat of passion or in a sudden fight without the pre-meditation. As per the post mortem report, the deceased died on account of septicemia, after about ten days of the incident. Therefore, the offence against the accused/appellant does not travel beyond Section 304 Part-II of the IPC.

In the result, the appeal partly succeeds and the conviction and sentence imposed on the accused under Section 302 of the IPC are set aside and instead thereof he is convicted under Section 304 Part-II of the IPC and he is sentenced to undergo rigorous imprisonment for ten years. The accused is stated to be in custody since 25/10/1995, thereby he has already undergone the sentence imposed on him. It is, therefore, directed that he shall be set at liberty forth with if not wanted in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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